

FILED

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NORTHEAST DIVISION

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TN

ASHLEY PEALER,

Plaintiff,

v.

UPPER CUMBERLAND  
DEVELOPMENT DISTRICT,  
RANDAL D. WILLIAMS, AND  
MIKE GANNON

Defendants.

NO. \_\_\_\_\_

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COMPLAINT

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Plaintiff Ashley Pealer, for her cause of action against the Defendants, states as follows:

**PARTIES**

1. Plaintiff Ashley Pealer is a citizen and resident of Clay County, TN, which lies in the Middle District of Tennessee, Northeast Division.

2. The Defendant Upper Cumberland Development District (hereinafter "UCDD" or "the Agency") is a political subdivision of the state of Tennessee, having been created pursuant to the "Development District Act of 1965," T.C.A. § 13-14-101 *et seq.* The principle place of business of the Agency is in Cookeville, Putnam County, TN, which lies within the Middle District of Tennessee, Northeast Division. The individual defendants are each citizens and residents of the Middle District of Tennessee.

**JURISDICTION**

3. This claim arises under the Constitution, laws and treaties of the United States, and specifically the Stored Communications Act 18 U.S.C. § 2701 *et seq.*, the Wiretap Act, 18

U.S.C. § 2510 *et seq.*, and for redress of the deprivation of constitutional rights as authorized by 42 U.S.C. § 1983. The Court therefore has jurisdiction pursuant to 28 U.S.C. § 1331.

#### **VENUE**

4. Venue lies in the Middle District of Tennessee pursuant to 28 U.S.C. § 1391(b) because all of the defendants reside in this District, and a substantial part of the events or omissions giving rise to the claim occurred within this District.

#### **ALLEGATIONS OF FACT**

5. Prior to June 18, 2012, the Plaintiff had been employed for a number of years by the UCDD. Plaintiff was provided a *Droid* smartphone by the UCDD. Her business email address was [apealer@ucdd.org](mailto:apealer@ucdd.org). The published personnel manual of the agency provides that communications stored in agency systems are the property of the agency. Plaintiff therefore does not assert an expectation of privacy with regard to the agency email account or voicemail.

6. Plaintiff maintained a separate private email account with the address [REDACTED], and a private password protected Facebook account.

7. Plaintiff also communicated through text messages which were stored through a service provided by Verizon. The UCDD personnel manual is silent concerning text messages. The Agency, through its supervisory personnel, never sought access to or advised of rules concerning text messages prior to June 18, 2012. Plaintiff sent and received personal messages and regarded them as private.

8. In the months preceding June 18, 2012, the agency was the subject of an extensive investigation by News Channel 5 television of Nashville. This investigation revealed what was appeared to have been the misappropriation of funds and the diversion of agency money for the private benefit of the Director, Wendy Askins, her family members and others.

The Agency, its directors and employees have been and are the subject of a federal criminal investigation.

9. As a consequence of the scandal, the agency employed counsel to do an internal investigation at a cost of nearly two hundred fifty thousand (\$250,000.00) dollars. During this investigation, the Plaintiff was interviewed. At no time were her text messages requested or reviewed, nor was she asked to permit access to her Facebook account. At no time were her personal Hotmail emails requested or reviewed.

10. Director Wendy Askins, who was suspected of misappropriation of public funds, was forced to resign. She was permitted to retain her cell phone and upon information and belief, none of her messages were requested or reviewed by the Agency or by any attorney employed on its behalf.

11. Subsequent to Ms. Askins' departure, Mr. Earl Carwile was asked to become the interim Executive Director of the Agency. Plaintiff served as acting Deputy Director and reported directly to Mr. Carwile.

12. On May 31, 2012, Mr. Carwile submitted to Mike Foster, who at that time served as Chairman of the Board, his resignation as Executive Director. Mr. Carwile complained of what he believed to have been poor financial management and inappropriate conduct on behalf of the UCDD Board. This included the surrender of over one hundred thousand (\$100,000.00) dollars in grant money to an individual who had applied for the grants while a UCDD employee. Mr. Carwile complained that rather than focusing upon the multiple problems created by the unethical and illegal conduct of the former Executive Director, board members previously associated with Ms. Askins had become obsessed with identifying the person or persons who had contacted the media and who had taken "information out."

13. Plaintiff was associated with Mr. Carwile and was among those who had opposed and refused to remain silent about illegal and possibly criminal activities attributed to Ms. Askins, her friends and family.

14. On June 18, 2012, Plaintiff reported to work. She was taken to the office of the then acting Director, Randal Williams, and terminated. Mr. Williams falsely told Plaintiff that she was being terminated mainly because of an agency reorganization.

15. None of the procedures for such an adverse job action contained in the policy and procedures manual were followed.

16. Defendant Williams, in the presence of the Sherry Thurman, announced in pretentious language that the Plaintiff had been terminated and must leave the premises immediately. Plaintiff was not allowed to obtain her personal belongings and her cell phone was taken from her.

17. Thereafter, some three hundred (300) pages of private text messages of the Plaintiff, which were stored through Verizon, were accessed by the Defendants and printed. The Defendant Mike Gannon, who by then served as the Chairman of the UCDD Board, reviewed the text messages along with Defendant, Michelle Price, Sherry Thurman and Patty Ray. After the text messages were printed they were published to various persons.

18. At least one of the Defendants used the private password of the Plaintiff to invade and access the Plaintiff's Facebook account as well. The Defendants intercepted a private email communication to Plaintiff's Facebook account.

19. The purpose and intent of this behavior was to embarrass and intimidate the Plaintiff in retaliation for her refusal to participate in or remain silent about the illegal behavior of Wendy Askins, and to determine the extent to which she was involved in disclosing illegal conduct to the news media.

20. At the time the stored messages were accessed by the Defendants, the Plaintiff had already been terminated. Consequently, none of the texts were used as a premise for her termination, and no proper or legitimate purpose has been offered by defendants.

## **CAUSES OF ACTION**

### **I.**

#### **VIOLATION OF STORED COMMUNICATIONS ACT**

21. The Stored Communications Act (SCA), 18 U.S.C. §§ 2701 *et seq.* prohibits unlawful access to stored electronic communications.

22. The Defendants, and each of them, intentionally accessed without authorization the stored communications of the Plaintiff through a facility through which electronic communication service was provided, to wit: Verizon.

23. Verizon is an “electronic communication service” as defined in 18 U.S.C. § 2701(a) because it is a “service which provides to users thereof the ability to send or receive wire or electronic communications.”

24. Verizon was a service which provided electronic storage, which is defined as “any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof...”

25. The Defendants intentionally accessed approximately three hundred (300) pages of stored electronic communications in violation of the SCA. In addition, the Defendants copied and published such private communications. Plaintiff had a reasonable expectation of privacy regarding her communications.

26. The access of Plaintiff’s Facebook account by these Defendants constitute a separate and independent violation of the Stored Communications Act.

## II.

### **DEPRIVATION OF PLAINTIFF'S RIGHTS UNDER THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES**

27. The intrusion of the Defendants as agents of a public agency into Plaintiff's stored text messages and Facebook account constitutes a warrantless search upon private property in which Plaintiff had a reasonable expectation of privacy. The search was not done pursuant to a warrant or in the investigation of any matter concerning the Plaintiff's employment, but was done following her termination for an improper purpose.

28. Consequently, Plaintiff's right to be free of unlawful searches and seizures by persons acting under color of law or by the agency itself, are per se unreasonable and have deprived the Plaintiff of her rights, privileges and immunities of citizenship as guaranteed by the Fourth Amendment to the Constitution of the United States.

29. The Defendants Williams and Gannon acted under color of law as public officials to deprive Plaintiff of her Fourth Amendment rights and are therefore individually liable. The UCDD had through these Defendants and others a policy consistent with violating the constitutional rights of the Plaintiff.

## III.

### **VIOLATION OF THE WIRETAP ACT**

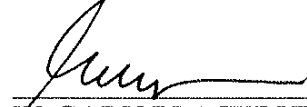
30. The UCDD, through its agents and employees, intentionally intercepted a wire or electronic communication from a third person to Plaintiff through the theft and misuse of her Facebook password.

31. The UCDD therefore violated the Wiretap Act, 18 U.S.C. § 2510 *et seq.* Plaintiff reserves the right to amend this Complaint specifically to present an additional claim against the person or persons who committed the act, which such person is identified in discovery.

**WHEREFORE**, Plaintiff prays as follows:

1. That proper process issue requiring the Defendants, and each of them, to answer this Complaint within the time provided by law;
2. That the Court permanently enjoin any further publication of text messages or information obtained from Plaintiff's Facebook account;
3. That the Court find that the Defendants, and each of them, answer to the Plaintiff in damages proximately caused by their violation of the Secured Communications Act, in an amount no less than one thousand (\$1,000.00) dollars for each violation, to be assessed against each individual Defendant, and in an amount not less than ten thousand (\$10,000.00) dollars for violation of the Wiretap Act;
4. That the Defendants be assessed punitive damages as provided under the Secured Communications Act;
5. That the Defendants be further assessed damages for the deprivation of Plaintiff's rights as guaranteed under the Fourth Amendment to the Constitution of the United States;
6. That the Plaintiff be awarded her reasonable attorney's fees and expenses as provided both by the Secured Communications Act, the Wiretap Act and 42 U.S.C. § 1988;
7. That a jury be impaneled to try all issues so triable.

Respectfully submitted,



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